PUBLIC PROSECUTOR

v.

NG PENG CHONG

HIGH COURT MALAYA, KUALA LUMPUR
KC VOHRAH J
[FT CRIMINAL TRIAL NO. CR 58-15-86]
4 JULY 1988

CRIMINAL LAW: *Dangerous Drugs - Accused arrested by police - Led police back to his hotel room and handed a small cigarette box from his bag - Police searched bag - Found large quantity of drugs in his bag.*

The accused was charged under s. 39(B) of the Dangerous Drugs Act 1952. The accused was arrested at a restaurant and led the police to his hotel room where he took out a set of keys from his trousers and unlocked a padlock which fastened the end of the zip of a travelling bag to a metal piece attached to the bag. The accused then opened the bag slightly and took out a small cigarette box containing 3.46 grammes of heroin. The police then searched the bag closely and found a plastic bag containing 55.63 grammes of heroin.

The accused version was that he had borrowed the bag from one Ah Kow, a friend of his and that although he had packed his clothes and the small cigarette box into the bag he had no knowledge of the plastic bag containing the larger quantity of heroin. This was alleged to be due to the fact that his friend had brought the bag to him later and that he did not check into the contents.

Held:

[1] Based on the totality of the evidence the Court was of the opinion that the accused had lied to extricate himself from blame and that the evidence adduced by the prosecution was sufficiently cogent. The defendant had failed to discharge the onus placed upon him by the Dangerous Drugs Act 1952.

[2] The accused was found guilty on the charge and convicted.

Cases referred to :
Sum Kum Seng v. PP [1981] 1 MLJ 244

For the public prosecutor - Zaini Bin Abdul Rahman DPP
For the accused - C.W. Chan; M/s. Mian Lee & Partners

JUDGMENT

KC Vohrah J:

The accused was charged as follows:

> That you on 17 January 1986 at about 2.55 p.m., in room No. 6, Loyal City Hotel, No. 16-B Jalan Raja Laut, in the Federal Territory of Kuala Lumpur, did on your own behalf traffic in dangerous drugs, to wit 59.09 grammes of heroin, in contravention of s. 39B(1)(a) of the Dangerous Drugs Act 1952 (Revised Act 234/80) and that you thereby committed an offence punishable under s. 39B(2) of the said Act as amended by Act 553/83.

The evidence was that the accused was arrested in a restaurant along Jalan Raja Laut. After his arrest and on being questioned he said, "Ada lagi 7 pek hoon dalam bilek hotel saya, No. 6." He then led a police party headed by Inspector Amarjit Singh to the reception counter of Loyal City Hotel about 150 metres from the restaurant and obtained a key from the receptionist. The accused then led the police party up the stairs to room 6 where he used the key to unlock the padlock to the door. He entered the room, unlocked a padlock fastened to the zipper of a travelling bag and withdrew from the bag a cigarette box holding 7 small packets of substances which the chemist found to contain 3.46 grams of heroin. A further search of the travelling bag by Inspector Amarjit revealed a plastic bag holding 111 packets of substances which the chemist found to contain 55.63 grams of heroin.

Inspector Amarjit (PW2) testified that on 17 January 1986 at 2.45 p.m. he left for Hock Hoe Restaurant at Jalan Raja Laut with a police party which included PW3, PW6 and one other. There he saw the accused seated alone at a table. He arrested the accused on suspicion of committing an offence. He said that after he had put a question to the accused the accused replied in Malay, "Ada lagi 7 peket pek hoon dalam bilek hotel saya, nombor 6." PW2 said he recorded this piece of information on a piece of paper which he had brought along with him and he recorded what the accused said as soon as the accused had given him the information. The document was produced (P27).

The accused then led the police party to the Loyal City Hotel along Jalan Raja Laut about 150 metres away from the restaurant. The accused led them up a flight of stairs to the first floor of the hotel building up to a small reception counter. The accused then spoke to an elderly Chinese man, Tan Shing (PW4), who handed him a key numbered "6" (P7). The accused then led the police up another flight of stairs to the second floor to room 6 and he used the same key to unlock a padlock (P8) to the door to his room.

He entered the room and went straight to a travelling bag (P4) which was lying on a chair by the bed. The accused then took out a bunch of 3 keys from his pocket (P6) and using the smallest key in the bunch he unlocked the padlock (P5) which fastened the end of the zip to a metal piece attached to one end of the travelling bag. The accused unzipped the bag a little, put his hand through the opening and took out a Dunhill cigarette box (P9) and handed it to him (PW2).

PW2 said that he examined the contents of this box in the presence of the accused and the members of the team and he found it held 7 small plastic packets P11A to G, each containing a substance which he suspected to be heroin.

PW2 said that he then examined the travelling bag. Lying uppermost in this bag was a white plastic bag (P10) which held 111 small plastic packets (P15), each containing a pinkish substance suspected to be heroin.

He said that when he was examining the bag and removing the contents and putting them on the bed the accused covered his face for a short while and after that he looked worried and was sweating a little.

The rest of the contents of the bag comprised a blanket (P17) a pair of trousers (P18), a shirt (P19), 2 belts (P20A and B), 2 pairs of underpants (P21A and B), cash of RM247 (P23) and 2 keys (P22A and B). Inspector Amarjit said he tested the two keys found in the bag and they unlocked the padlock (P5) attached to the travelling bag.

PW2 during cross-examination repeated his evidence which he gave during examination-in-chief. However another aspect of the case became clear - that the accused had been arrested for possession of 2 packets of a substance suspected to be heroin and a bunch of keys, the same bunch (P6) from which he selected the smallest key to the padlock to his bag, was found in his trousers' pocket although the bunch was given back to him at the restaurant.

Inspector Nordin (PW3) gave evidence which substantially corroborated the evidence of Inspector Amarjit that the accused was arrested at the restaurant and had said he had 7 more packets in his hotel room, room 6; and that he led the police to the hotel where he obtained the key to room 6; that he unlocked the padlock to a bag and "unzipped the bag a bit"; and that he had drawn out a package containing 7 small packets; and that Inspector Amarjit found a plastic bag in the said bag which contained 111 packets.

Detective Sergeant Zulkifli (PW6), a member of the police team, was offered for cross-examination and he too substantially corroborated the evidence of Inspectors amarjit and Nordin as regards what took place in the hotel room, room 6; he saw the accused unzip a bag and take out something and hand it to Inspector examining it, the Inspector taking out a plastic bag from the first bag and placing the contents of the plastic bag on the bed. He said he was all the time inside the room by the door, substantiating the evidence of Inspector Nordin that he was standing guard at the door.

A hotel register (P4) was seized from the hotel where the raid was made. The investigating officer (PW5) of the case seized it from the caretaker Tan Shin (PW4) one day after the raid. But Tan Shin, an old man of over 80 years of age with failing eyesight, could not remember the seizure of the register nor the raid nor the accused. He did however say P24 was the register for Loyal City Hotel and that the book was used from 28 September 1985. The "hotel register" is enjoined by a law of Malaysia, the Registration of Guests Act 1965, to be kept as a register under s. 3(1)(a) of the Act in the form in the First Schedule of the Act. Under s. 3(1)(b) certain particulars relating to, *inter alia*, the date of the arrival of the guest at the hotel, the name of the guest, and his NRIC are required to be entered into the register. Under s. 35 of the Evidence Act an entry, *inter alia*, in a register made by a person in performance of a duty specially enjoined by the law of the country in which the document is kept is itself a relevant fact. In the register against the arrival date "16 January 1985" (the year "1985" is a manifest error but from the register it is clear it should read "1986" and it refers to the day which is one day before the raid to room 6 of the hotel) is an entry that one Ng Peng Choon NRIC No. 0359876 registered in the hotel on 16 January 1986 and that he had been allotted room 6. Ng Peng Choon is the accused.

Inspectors Amarjit and Nordin and Sgt. Zulkifli were cross-examined and it was put to them that the plastic bag containing 111 packets of heroin was found outside the room by one or two of the police team and brought inside room 6 and that it was not discovered in the travelling bag. All 3 denied the allegations. It was put to Inspector Amarjit that the accused did not take out the key to unlock the padlock attached to the accused to the bag but that an officer took it out from the accused's pocket. Inspector Amarjit denied this. Both inspectors also denied that the room was searched first before they went to the bag. And Inspector Amarjit also denied that after the cigarette box was taken out of the bag he further questioned the accused as to where the other drugs were and that one of the officers assaulted the accused in order to force him to produce other drugs.

The caretaker (PW4) was asked whether there were things stored on the floor where room 6 was located. He said, and he was vague about this as to the time and the place, condemned mattresses were kept at one corner. But PW3's evidence was clear that there was nothing in the space between rooms 6, 7 and 8.

I could find nothing in the evidence of the witnesses which detracted from the prosecution's case that the accused after his arrest, had informed Inspector Amarjit that he had 7 more packets of "pek hoon" in his hotel room, room 6 and that he then led the police to room 6 in Loyal City Hotel the door of which he unlocked; that using a key he possessed he unlocked the padlock which was used to lock the travelling bag and that the bag held altogether 118 packets of substances which contained heroin, 7 inside 1 cigarette box and 111 in a plastic bag; and that he appeared frightened during the search conducted in the bag. The 118 packets, packed and sent to the chemist for analysis by the investigating officer (PW5) and as reported in the report (P21) of the chemist, showed that the contents of these 118 packets contained 59.09 grams of heroin.

The information which the accused gave to the police led to the discovery of the drugs in the bag. His statement showed that room 6 in the hotel was his room. That he made such a statement is clear from the record made contemporaneously by Inspector Amarjit Singh on a piece of paper, P27, no doubt following the advice of Chang Mit Tat FJ delivering the judgment of the Federal Court in *Sum Kum Seng v. PP* [1981] 1 MLJ 244. The accused's act of unlocking the padlock attached to the bag using a key from his pocket showed that he had custody and control of the bag. And in all the circumstances the 118 packets being discovered therein showed that he also had control and custody of the 118 packets. To my mind there was ample evidence to invoke the presumptions under s. 37(d) and (da) and the onus is on him to rebut the presumptions that he was in possession of the substance in the 118 packets, that he knew the substance was heroin and that he was trafficking in the said heroin. And I called upon him to make his defence.

Defence

The accused elected to give his evidence on oath. He denied that the plastic bag (P10) containing 111 packets of heroin was found in the travelling bag in his hotel room.

He, however, admitted telling the police after his arrest at Hock Hoe restaurant that he had seven packets of "pek hoon" in his hotel room and that he brought the police to room 6 of the Loyal City Hotel. He admitted inserting his hand into the bag and taking out a cigarette box containing 7 packets of a substance out of the travelling bag (P4) after unlocking the padlock attached to it with one of 3 keys (P6) which he had with him. According to him PW2 then examined the cigarette packet, emptied it and counted its contents.

After that was done PW2 asked him it he had anything more and he replied that there was no more. Then PW2 took the travelling bag and examined it; PW2 took out articles, one by one, from the bag. After this was done, he said, PW2 asked "me whether I still had some more of 'that thing'." The accused said that he replied that he did not have anymore whereupon one of the officers slapped him twice. Then he said, he covered his face with both his hands. And he continued, "then I saw a Malay man give a package to PW2."

In regard to this man who had handed a package to PW2 the accused said he saw him come from his back. PW2 told the man who had slapped the accused not to beat him and PW2 then emptied the contents of the package on to the bed and counted the packets. The accused said that then PW2 asked him whether the things belonged to him. He said he denied it, and

PW2 then put the things back into the package which was a plastic bag. He also said that the police then searched the room again.

How did the travelling bag get into the room of the hotel? He had a story to tell. In a cautioned statement (D32) which he said he made to the police (and this was confirmed by the recording officer, DW2) he had mentioned one Ah Kow. He testified that he had slept in the room of this Ah Kow (who he had known then for 6 months) at Jalan Peel 2 days before his arrest. According to him this Ah Kow had requested him to book a room on 16 January 1986 at Chow Kit area saying that "his friend (or friends) would be coming." The accused said that on 16 January 1986 at between 2 p.m. and 3 p.m. he rented a room at Chow Kit Road and between 6 p.m. and 7 p.m. he went to see Ah Kow at his room at Jalan Peel and told him he had rented a room at the Loyal City Hotel at Chow Kit area. He said that he told Ah Kow that he wanted to sleep at the hotel and requested him to lend a bag to him, which Ah Kow did, to put his clothing in. And after he had packed his clothing in the borrowed bag Ah Kow told him that he would meet him at 9 a.m. the next day at Hock Hoe coffee shop. The accused testified that he, however, did not take the bag with him as Ah Kow "told me he would deliver the bag to me next day at the coffee shop." He said the bag was not locked. He then left the house and went to have his food at Chow Kit road and he spent the night in the hotel room that he had booked.

He waited for Ah Kow the next morning. Ah Kow came with the bag and both of them proceeded to room 6 of the hotel with Ah Kow carrying the bag. Ah Kow then placed the bag on a chair in the room. The accused said that he noticed that it was locked. And Ah Kow handed him a bunch of 3 keys (P6) and told him to wait for him at 2 p.m. that day at Hock Hoe coffee shop. Ah Kow then left and he too left and he did not unlock the bag.

At 2 p.m. the same day he was at the coffee shop and the police arrested him and the episode of his arrest which he described, and which I had set out earlier, took place.

He said that after his arrest he led the police to Jalan Peel where Ah Kow had his room and he showed the police the place where Ah Kow lived. While in Pudu prison he saw Ah Kow in the same prison and Ah Kow told him he had been arrested in his room by the police. Inspector Amarjit Singh confirmed that on information given by the accused a person was arrested and the person was charged for possession of drugs. It would therefore appear that this person might be the Ah Kow that the accused saw in prison.

Finally he said he was convicted in Court for being in possession of 2 packets of heroin in respect of his arrest at Hock Hoe coffee shop. He said he told the police that he had seven more in the hotel room because he knew he only had 7 packets there.

To summaries his evidence. He admitted to his leading the police to the hotel room where he had told the police he had 7 more packets of heroin. The 7 packets found in the cigarette box in the travelling bag he admitted were his. But he denied that the plastic bag of 111 plastic packets of heroin was found in the bag; the plastic bag had been found elsewhere.

His story was full of improbabilities. If the plastic bag of drugs was not found in the travelling bag in his room as stated by the prosecution why then the rigma-role of his having borrowed a bag for keeping his clothes, of the bag having no key at the time he left Ah Kow's room, of the travelling bag being brought to his hotel room by Ah Kow the next day with a padlock, of his being handed a bunch of keys by Ah Kow, the plastic bag of drugs not being found in the travelling bag? After all if the plastic bag was not in the bag why was it fastened by a padlock? It is difficult to see what his long rambling story is meant to convey unless it is

to throw blame on Ah Kow. Is it suggested that Ah Kow brought the locked bag, with the plastic bag of drugs in it, that Ah Kow took out the plastic bag and drugs and had them placed elsewhere? But the accused did not say so. And it is difficult to see how the Court may draw such an inference. And in any event two keys which could and which, when tested, did unlock the padlock fastened to the travelling bag, were found inside the travelling bag by the police, suggesting most probably there were no more other keys to the same padlock.

Then again if he wanted to sleep the night on 16 January in the hotel and he had already packed the clothes in the bag borrowed from Ah Kow why did he not take the bag with him to the hotel? The bag is not a big bag - it in fact is a sling bag which could have been easily slung over his shoulder when he went to the hotel to spend the night there. He said Ah Kow had told him that he would deliver the bag to him the next day.

His Counsel did ask him why Ah Kow did not allow him to take the bag with him that day and he gave a vague reply, "He was my friend. I seldom asked him about his affairs." Under cross-examination, however, he said that Ah Kow stopped him from bringing the bag because Ah Kow wanted to use the bag. I find that strange. If indeed Ah Kow lent him the bag would Ah Kow first allow the accused to pack his things in the bag and then tell him he wanted to use the bag? The distinct impression I had was that he was somehow trying to throw the blame on Ah Kow for landing him into trouble though he did not voice that expressly. But if his story was that apart from the cigarette box of drugs no other drugs were found in the travelling bag in the room by the police is to be believed what was the connection between Ah Kow and the plastic bag of drugs which the accused alleged was found elsewhere? As I had mentioned earlier the accused never mentioned that Ah Kow had unlocked the padlock to the travelling bag to remove the plastic bag while in the room. In fact two keys to the same padlock were found inside the travelling bag. Further it was the accused's evidence that Ah Kow left the room earlier and then he himself left the room and handed the room key back to the hotel, so it was not a question of Ah Kow remaining back in the room and meddling with the locked bag.

The accused's reference to Ah Kow and Ah Kow disallowing him to bring the borrowed bag to the hotel room, Ah Kow bringing it the next day, locked, to the room, Ah Kow handing a bunch of 3 keys to him one of which could open the padlock to the travelling bag was, as I mentioned earlier, somehow an attempt to shift blame on to Ah Kow. But the accused was adamant that the plastic bag of drugs was not found in the travelling bag. Yet he persisted in showing that he knew nothing about the contents of the locked bag except for his personal belongings and the cigarette box of 7 packets of heroin. The truth is that, as the prosecution alleges, the plastic bag of drugs was found in the travelling bag in his presence.

Under cross-examination the accused re-iterated that Ah Kow told him on 15 January 1986 to go out and rent a room in Chow Kit area for the 16th with Ah Kow stating that his friend (friends) would be coming from outstation to Kuala Lumpur and that he (Ah Kow) had arranged to meet with his friend (friends) around there. So the accused rented a room in Loyal City Hotel on the 16th for two days. He also stated Ah Kow paid for the rooms. And the accused went back to inform Ah Kow that he had rented the room. From this it would appear the friend or friends of Ah Kow were not expected on the 16th to stay in the room. Why then was money waster for 1 day to rent the hotel room? And again why did he book the room in his name or not in the name of Ah Kow's friend and friends? The story is improbable.

In any event he stayed in the room on the 16th. And he wanted to bring his clothing. And he packed some items of clothing and also a blanket into the bag in Ah Kow's premises. But why pack the blanket He said he packed it because he was afraid it would be cold in the hotel room. But the room was not, on his admission, air conditioned. Did he not see a blanket in the room when he went there earlier, he was asked? He said that he did not notice. It is highly unlikely that there could have been no blanket in the hotel room. He must have realised the silliness of such answer because when he was asked if he did not protest to Ah Kow when Ah Kow disallowed him to bring the bag since he (the accused) knew the blanket was a necessity, he replied, "Ah Kow told me there was a blanket in the hotel." He was asked if there was a blanket in the room why then did he still pack the blanket in the bag. He lamely replied, "I was afraid of the cold - hotel blanket might not be enough." So why did he not then take the bag with the blanket?

In any event if Ah Kow had wanted to use the bag and had told the accused so after the accused had packet his bag then would it not follow that Ah Kow would have left out the blanket in the bag after Ah Kow had made use of the bag - for, was he not the one who told the accused that the hotel room would have a blanket?

Then again the clothing in the bag were not many - if indeed the accused's story is true that after Ah Kow told him not to bring the bag so he did not bring the bag along with him that night - would he not have taken his clothes in a shopping or other ubiquitous plastic bag? His excuse under cross-examination was that he did not think of it at that time. Highly unlikely - surely he needed clothing for the next day.

My view is that his story that the bag was not his, that he did not bring it along with him to the hotel but that it was delivered to him locked with his clothing and a blanket by Ah Kow is highly improbable. Ah Kow to my mind probably exists - he may well have been the source or courier of the accused in respect of the drugs but the accused's elaborate story of Ah Kow's role in relation to the travelling bag, the accused not being in possession of the said bag and the plastic bag of drugs is highly improbable.

But why then the elaborate story about the bag when, as he alleged, no plastic bag of drugs save for his cigarette box of 7 packets of heroin was found in the bag? To my mind, in desperation he had invented bits and pieces of lies at the spur of the moment which would as far as possible distance himself from the travelling bag. But with these lies his claim of the plastic bag being found elsewhere, not in the travelling bag, becomes all the more inconsistent.

I now come top what transpired in hotel room number 6. There is no dispute that the accused unlocked the door of room 6, then he straight-away went to the travelling bag and that he unlocked the padlock fastened to the travelling bag. There is no dispute also that the accused withdrew a cigarette box containing 7 packets of heroin.

The accused disputed the discovery of the plastic bag of drugs in the travelling bag. He also alleged that he was slapped by a police officer.

He said he was slapped by a police officer after Inspector Amarjit had examined the contents of the travelling bag and had asked him if he had anymore of "the thing" and he said he covered his face. It will be remembered that Inspector Amarjit had stated in his evidence that when he was examining the travelling bag the accused covered his face for a short while and that after that the accused looked worried and was sweating a little. He was not cross-examined on this. However Inspector Amarjit was cross-examined about an incident

which allegedly took place after the accused had taken the cigarette box from the travelling bag; it was put to him that after he had asked the accused as to where the other drugs were, that one of the officers assaulted the accused in order to force him to produce the other drugs. Inspector Amarjit denied this. My view is that the allegation was put to Inspector Amarjit, and the evidence given by the accused more or less coincided with the allegation, in order to offset the evidence by Inspector Amarjit that the accused covered his face, looked worried and sweated a little bit while Inspector Amarjit Singh was examining the bag. I have no reason to disbelieve Inspector Amarjit Singh when he said there was no such assault. To my mind the allegation of the accused was to cover the clear evidence that he was nervous about the discovery of the plastic bag of 111 packets of drugs; the evidence showed, to my mind, that the accused was aware of the plastic bag of drugs in the travelling bag.

It will have been noticed that 2 prosecution witnesses, Inspector Amarjit and Inspector Nordin, had distinctly mentioned that the accused unzipped the bag a little and put his hand into the bag and withdrew the cigarette box holding 7 packets of heroin. To my mind the evidence meant clearly that the accused knew of the nature of the plastic bag when he did not unzip the travelling bag to the full length of the zip from one end of the top of the bag to the other; he knew full well that if the contents of the bag were exposed the plastic bag would have been seen immediately. He might have felt that with the surrender of the cigarette box of 7 packets of heroin the police would have been content and would have left him alone; to my mind that was his ploy. He might have been naive about it but that is another matter.

Again the allegation was put during the cross-examination of Inspector Amarjit Singh that an officer took out the bunch of keys (one of which unlocked the padlock attached to the travelling bag) from the accused's pocket. In this evidence, however, the accused did not make such an allegation. He said he took out the keys from his purse and used the smallest key in the bunch to unlock the padlock fastened to the travelling bag.

It was also alleged during cross-examination that the police searched the room first before the travelling bag was examined. The accused did not however make the allegation in his evidence. He said that after the entered the room he took out the keys and unlocked the padlock to the travelling bag. It is clear from his evidence that the police searched the room after the discovery of the drugs.

Considering the totality of the evidence it is clear that the accused lied, and he lied indiscrimately, to extricate himself from the case established by the cogent evidence adduced by the prosecution that the police recovered a plastic bag holding 111 packets of substances which contained 56.63 grams of heroin from a bag; that he led them to the bag; that the bag was in his hotel room; that he had the key to the padlock attached to the bag. The cogent prosecution evidence also included facts from which the clear inference that the accused knew about the plastic bag of drugs in the travelling bag could be drawn; he unzipped the travelling bag and only to a small extent in order to take out the cigarette box of drugs so as not to expose the plastic bag of drugs in the travelling bag; he covered his face and sweated a little bit when the travelling bag was searched; the 7 packets in the cigarette box containing 3.46 grams of heroin would not attract a charge under s. 39B of the Dangerous Drugs Act where on conviction the death sentence is mandatory but the 111 packets containing 55.63 grams of heroin would attract such a charge. My view is that the defence of the accused did not cast any reasonable doubt on the prosecution's case. The mismash of allegations and assertions made by the accused trying to connect Ah Kow with the possession of the bag, is, as I have indicated earlier, improbable and inherently inconsistent and does not also create a reasonable doubt on the prosecution's case that the accused was in possession of the plastic bag of drugs.

The accused has admitted to the possession of the 7 packets of heroin but denied knowledge of the 111 packets. There is however nothing in the totality of the evidence to show that he has discharge the onus on him, on a balance of probabilities, to disprove that he knew the drugs contained in the balance of 111 packets were heroin and that he was trafficking in all the heroin contained in the 118 packets.

In the circumstances I find him guilty on the charge and I convict him.

Also found at [1988] 2 CLJ 491